

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>J.A., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 22-0692</b>
	)	<b>Issued: November 10, 2022</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. CUSTOMS AND BORDER PROTECTION,</b>	)	
<b>Imperial, CA, Employer</b>	)	

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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 31, 2022 appellant filed a timely appeal from an October 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the October 8, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period March 29 through April 27, 2021 causally related to his accepted February 8, 2019 employment injury.

## FACTUAL HISTORY

On February 8, 2019 appellant, then a 43-year-old automotive mechanic, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained a right shoulder injury when he used a wrench to break loose a front strut bolt while in the performance of duty. He stopped work on March 29, 2021. OWCP accepted appellant's claim for incomplete rotator cuff tear of the right shoulder.

Appellant thereafter filed claims for compensation (Form CA-7) for disability from work commencing March 29, 2021.

In support thereof, appellant submitted a March 26, 2021 narrative report from Dr. David J. Chao, a Board-certified orthopedic surgeon, who reported physical examination findings of the right shoulder, noting that appellant's shoulders exhibited no swelling or atrophy with mild tenderness to palpation of the right acromioclavicular joint. There was 5/5 strength upon all the range of motion tests of the right shoulder. Dr. Chao diagnosed partial thickness tear of the right rotator cuff, impingement syndrome of the right shoulder, and osteoarthritis of the acromioclavicular joint.

In a March 26, 2021 form report, Dr. Chao reported that appellant was off work from March 26, 2021 until his next visit and pending right shoulder surgery."

In an April 30, 2021 development letter, OWCP notified appellant of the deficiencies of his disability claim. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.

On April 28, 2021 Dr. Chao performed OWCP-authorized right shoulder surgery, including cuff and labrum debridement, subacromial decompression, bursectomy, coracoacromial ligament resection, and distal clavicle excision.

Appellant submitted a May 5, 2021 report from Dr. Chao, who reported physical examination findings and diagnosed partial thickness tear of the right rotator cuff, impingement syndrome of the right shoulder, and osteoarthritis of the acromioclavicular joint. Dr. Chao continued to hold appellant off work. In a June 10, 2021 form report, he indicated that he treated appellant on June 9, 2021. Dr. Chao held appellant off work until his next visit.

By decision dated June 14, 2021, OWCP denied appellant's disability claim in part, finding that the medical evidence of record was insufficient to establish disability from work for the period March 29 through April 27, 2021 due to the accepted February 8, 2019 employment injury.

However, it found that the medical evidence of record was sufficient to establish disability from work commencing April 28, 2021.<sup>3</sup>

On August 10, 2021 appellant requested reconsideration of the June 14, 2021 decision.

Appellant submitted an August 11, 2021 note wherein Dr. Chao noted that appellant was placed off work starting March 26, 2021 pending a right shoulder surgical procedure because his condition had worsened to the point that it was affecting his everyday work duties and life due to the continuous swelling, sharp stabbing pain along the arm, and cramping down to the fingers, which were debilitating to his right shoulder and arm. Dr. Chao indicated that, in order to prevent overstress and a severe injury to the right shoulder and because pain medicine was no longer effective, appellant was held off work until surgery was approved.

Appellant also submitted reports dated July 26 through September 20, 2021, wherein Dr. Chao provided physical examination findings, detailed medical treatment, and diagnosed multiple right shoulder conditions. In these reports, Dr. Chao indicated total disability from work for various periods between July and October 2021.

By decision dated October 8, 2021, OWCP denied modification of its June 14, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>5</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>6</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>7</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical

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<sup>3</sup> Based on the June 14, 2021 decision, OWCP then paid appellant wage-loss compensation for disability from work on the supplemental rolls effective April 28, 2021.

<sup>4</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> 20 C.F.R. § 10.5(f).

<sup>6</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>7</sup> *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.<sup>9</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period March 29 through April 27, 2021 causally related to his accepted February 8, 2019 employment injury.

Appellant submitted an August 11, 2021 note wherein Dr. Chao noted that appellant was placed off work starting March 26, 2021 pending a right shoulder surgical procedure because his condition had worsened to the point that it was affecting his everyday work duties and life due to the continuous swelling, sharp stabbing pain along the arm, and cramping down to the fingers, which were debilitating to his right shoulder and arm. However, this report is of limited probative value regarding appellant's disability claim for the period March 29 through April 27, 2021 as Dr. Chao did not provide sufficient medical rationale explaining his opinion on causal relationship. Therefore, the August 11, 2021 note of Dr. Chao is insufficient to establish appellant's disability claim for the period March 29 through April 27, 2021.

In a March 26, 2021 narrative report, Dr. Chao, reported physical examination findings for the right shoulder and diagnosed partial thickness tear of the right rotator cuff, impingement syndrome of the right shoulder, and osteoarthritis of the acromioclavicular joint. In a March 26, 2021 form report, he noted that appellant was off work from March 26, 2021 until his next visit and indicated, "TTD pending right shoulder surgery." However, these reports are of no probative value regarding appellant's disability claim because they do not contain an opinion that appellant had disability for the period March 29 through April 27, 2021 due to the accepted February 8, 2019 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue

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<sup>8</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>9</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>10</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

of causal relationship.<sup>11</sup> Therefore, this evidence is insufficient to establish appellant's disability claim.

On April 28, 2021 Dr. Chao performed OWCP-authorized right shoulder surgery, including cuff and labrum debridement, subacromial decompression, bursectomy, coracoacromial ligament resection, and distal clavicle excision. In a May 5, 2021 report, Dr. Chao reported physical examination findings and diagnosed partial thickness tear of the right rotator cuff, impingement syndrome of the right shoulder, and osteoarthritis of the acromioclavicular joint. He held appellant off work. In a June 10, 2021 form report, Dr. Chao indicated that he treated appellant on June 9, 2021. He continued to hold appellant off work until his next visit." In reports dated July 26 through September 20, 2021, Dr. Chao provided physical examination findings, detailed medical treatment, and diagnosed multiple right shoulder conditions. In these reports, he indicated total disability from work for various periods between July and October 2021. However, none of these reports contain an opinion on causal relationship between the claimed disability and the accepted February 8, 2019 employment injury. As noted, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>12</sup> Therefore, these reports of Dr. Chao are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between the claimed period of disability and the accepted February 8, 2019 employment injury, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish disability from work for the period March 29 through April 27, 2021 causally related to his accepted February 8, 2019 employment injury.

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<sup>11</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board